

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled April meeting on Wednesday, April 30, 2008, at 4:00 p.m. in the Board of Commissioners Former Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Dean Bonessi, Chairman, Jim Phelps, Vice-chairman, Jim Crafton, Tony Engel, Ann Pouch, Alternate Board Member Eric Goodman, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Secretary to the Board Karen Ann Antonucci.

Chairman Bonessi called the meeting to order at 4:06 PM.

No introductions of the Board were necessary, as only Board members and staff were present.

Associate County Attorney Sarah Zambon asked Chairman Bonessi if she and Zoning Administrator Toby Linville could make some adjustments to the agenda. She wanted to talk about the bylaws under Old Business. Under New Business she said that Zoning Administrator Toby Linville wanted to talk about the SR for Mobile Home Parks and the changes to the Land Development Code.

Chairman Bonessi said the adjustments would be fine with him and asked the Board if they objected. No Board member objected to the adjustments in the agenda.

Chairman Bonessi asked the Board for any adjustments or changes to the March 26th minutes.

Jim Phelps said he had two adjustments. He noted on page 1 of 32, fourth paragraph down, third sentence where the minutes stated "*made*" a motion should actually read "*asked*" for a motion. Jim Crafton made first motion and Mr. Phelps himself "*asked*" for the motion. He also noted a change on page 3 of 32, fourth paragraph from the bottom, last sentence. The sentence reads "There being no objections, so *awarded*". The sentence should read, "There being no objections, so *ordered*".

There being no other changes or adjustments to the minutes Chairman Bonessi asked for a motion to accept the minutes as corrected. Jim Phelps made first motion. Tony Engel seconded. All Board members were in favor of accepting the minutes as corrected. Chairman Phelps signed the minutes, as he had presided over the March meeting.

Chairman Bonessi asked if there were changes to the Dalton Order.

Jim Crafton said he liked the language of b. and c. on page 3 of the Order. He thought it was a good representation of how the Board felt and it was important to put that language in the Order.

Associate County Attorney Sarah Zambon said the members that were not at the March meeting should not vote. But noted that Ann Pouch, though she voted against the decision that was rendered, could vote on acceptance of the Order, because the vote on the Order is saying that it accurately represents the decision of the Board and what happened at the hearing. She stated that Eric Goodman and Chairman Bonessi could not vote. Jim Crafton, Tony Engel, Jim Phelps, and Ann Pouch could vote.

Jim Crafton moved that the Board approve the order as put before them. Jim Phelps seconded. Chairman Bonessi asked if all Board members were in favor. Jim Crafton, Tony Engel, Jim Phelps, and Ann Pouch were in favor of approving the Dalton Order.

Zoning Administrator Toby Linville said he wanted to explain to the Board that Roy Dalton was not going to reapply for the Special Use Permit for the Mobile Home Park. Mr. Dalton realized that it is easier to subdivide his property than to go through the special use process. He can use less land by subdividing his property and Mr. Dalton won't need to buffer the area. He can subdivide and still own the land. He said Mr. Dalton can put the 7 lots he was requesting on ½ acre lots and it would still be the same density, but the land would be under his ownership. He'll have more usable land by doing it that way. Mr. Dalton will just have to meet setbacks and the rest can remain open.

Old Business

Case SUP-08-02, Rolando and Amelia Gayarre, Recreation Vehicle Park, is requesting a special use permit for a Recreational Vehicle Park which is required in the Residential 2-MH/Local Commercial zoning district as defined by S.R. 4.18 in the Land Development Code. Property is located at 350 Old Sunset Hill Road, Lot 1. **(PIN-9579975700)**

Zoning Administrator Toby Linville said the case was scheduled for the last meeting and the applicants were not there. The Gayarre site plan was not correct. They have to go back before the Technical Review Committee. He suggested to the Board that the best thing to do would be to dismiss the case. Zoning Administrator Toby Linville said the Gayarre's won't have to reapply, but he would have to re-advertise. Mr. Linville was not sure if they would reapply.

Jim Phelps asked if it was the second meeting that the Gayarre's have not been there. Zoning Administrator Toby Linville said, "Yes".

Associate County Attorney Sarah Zambon said they hadn't been to the Technical Review Committee yet.

Jim Phelps said it was best if the Board dismiss the case.

Chairman Bonessi asked for a motion to dismiss Case SUP-08-02. Tony Engel made a motion to dismiss the case. Jim Crafton seconded. All Board members were in favor of dismissing the case.

Chairman Bonessi said the Board would move on to the bylaw discussion.

Associate County Attorney Sarah Zambon said the bylaws would be on the May 5th Board of Commissioners' Discussion Agenda. She invited the Zoning Board members to the Board of Commissioners' meeting, Monday at 5:30 pm. She felt that if the Commissioners' had questions about the bylaws, members of the Zoning Board may want to be present to address them. She said she can talk about the changes she made and legally why she made them and how it interplays with the Land Development Code.

Jim Phelps said he would be at that meeting. Chairman Bonessi said he would try to attend the meeting.

Associate County Attorney Sarah Zambon said she forgot to mention she had another item to adjust on the agenda.

Associate County Attorney Sarah Zambon said she had attended a continuing legal education class on zoning and had material to share with the Board. She said a presentation was given on why non-lawyers can't be heard at quasi-judicial hearings. She said there is a statute that says an unauthorized person practicing law is a misdemeanor. The North Carolina Bar Association determines who is unauthorized. It is a combination of the statute and the bar.

Jim Crafton: If it defines, that to represent an applicant in a proceeding constitutes practicing law?

Associate County Attorney Sarah Zambon: Yes, in a quasi-judicial proceeding, yes.

Zoning Administrator Toby Linville: It they were to have a case where an indigent person had family members applying for a variance because of a medical condition, could they be represented by the public defenders office?

Associate County Attorney Sarah Zambon: No, because the public defenders office only does criminal actions. They could technically be represented by a legal aid or Pisgah Legal, but I'm not sure if Pisgah Legal would be willing to do that.

Eric Goodman: What if they had a power of attorney?

Associate County Attorney Sarah Zambon: That is not an option. They have to be an actual attorney or the applicant. All the applicant has to do is call whoever they want – I'm the applicant I call so-and-so and they are going to explain it to you. So-and-so gets up and explains and you guys can ask so-and-so whatever, but so-and-so is considered their witness. As long as they show up.

Eric Goodman: That's usually a surveyor or an engineer.

Associate County Attorney Sarah Zambon: Sometimes just the surveyor will come or just the engineer. That's when we have problems.

New Business.

Before Zoning Administrator Toby Linville presented his updates on the Land Development Code there was a discussion about Board attendance at the May 28th meeting. Chairman Bonessi said he would need to recuse himself from one and possibly two of the cases. Jim Phelps said that he would not be able to attend the May meeting. The Board felt that at least 2 Alternate board members would need to be present to vote on the cases. There was discussion on postponing the meeting, legal ad time frame deadlines, securing Alternate members before a decision of postponement must be made and who would be Chair for the cases Chairman Bonessi must recuse himself.

Ann Pouch: I make a motion that if the Zoning Board Secretary cannot get two (2) Alternate Board members by Wednesday, May 7th, to serve at the May 28th meeting that the May meeting be cancelled and moved to June 4th.

Tony Engel: Seconded. All Board members were in favor of the motion.

At this point Zoning Administrator Toby Linville took some time to explain the text and map amendments April 7, 2008 revisions to the Land Development Code. There were no major changes, just some things that should have been there in the first place.

He noted the changes as being:

-*R-40* – in regards to Special Use Permit for Residential Open Spaces Development, the revision does not require 40 acres minimum for a lot.

-*Water Supply, watershed language* – the change brings the County in line with state law.

-*Supplemental Requirement for Manufactured Housing* – the former language required a 4/12 roof pitch, which does not exist. The 3/12 for the singlewide and the doublewides and modulars are built to a 4/12 pitch. The definition of mobile home and manufactured home have been more clearly defined. Pre 1976 homes are called mobile homes. Homes built 1976 and after are called manufactured homes. Pre 1976 mobile homes can either stay where they are now or only be moved to an approved mobile home park. No 1976 or earlier mobile homes can be moved into the County. 1976 or after manufactured homes that are already in the County can be moved to a lot or a mobile home park in a zoning district that allows it.

-*Supplemental Requirements for Outdoor Storage* – outdoor storage can be placed in a yard abutting a road.

-*Many Supplement Requirements* stated that ‘the use must be placed on a secondary road or higher’ - this requirement has been removed.

-*Table of Permitted Use* – Motor vehicle sales are now allowed in Community Commercial Zones with a Special Use Permit.

-*Governmental Recreational Facilities, Sporting and Recreational Facilities, Swim and Tennis Clubs* – are now allowed in residential districts.

-*Model Home Sales* – are now allowed in all districts.

-*Subdivision Ordinance* – major subdivisions, (11-34 lots), and Commercial subdivisions just go through Technical Review Committee approval.

-*Subdivision Ordinance* – major subdivisions, (those greater than 300 lots), will go to the Board of Commissioners.

-*Improvement Guarantees* – extended to (2) years for road, landscaping, etc. They can be renewed.

-*Code Enforcement Services Department* – has the right to remove signs placed in the right-of-way and throw them away. This does not include political signs. They are protected by federal law. Political signs must be taken down 7 days after voting by the parties that placed them there.

-*Residential subdivision lots* – Zoning Administrator has the right to reduce the front yard setbacks in older subdivisions.

Zoning Administrator Toby Linville then addressed problems and concerns with the Supplemental Requirement 1.13 Manufactured Home Park in regard to the Roy Dalton – Mobile Home Park Special Use Application. One question in the case was if the road on the site was a private right-of-way corridor or service road. Under number (4) *a MHP must be accessible by a minimum of 30 feet in public road frontage* – that would have been Bald Rock Road because that property is access to that road or a private right-of-way corridor. If you had a landlocked property and you had to create a road to it from a state maintained road, then you would have to build that road to private right-of-way standards. For the roads inside of the park you use either the MHP collector or MHP service road. That’s on the chart on the next page. For Roy Dalton’s site plan, he had it drawn correct. Water and sewer were an issue in the case. In the future water and sewer will just be a note on the site plan. The only thing to be concerned with is, what kind of water and sewer will the project have. Environmental Health will make the decisions when the time comes. The buffering was an issue. Roy Dalton could have shown buffering right around the home sites, (the park area, not around each individual trailer). He did not have to have buffering around the entire perimeter of the site. The common area was drawn wrong and will have to be corrected. It will not necessarily need to be buffered. It depends on what you are doing in the common area. If it’s just vacant land then no buffering is needed. If it is a picnic shelter and play area, then yes, buffering would be required. Indicating another phase of the project may serve to confuse Board. These can be left off so there is no confusion. If Mr. Dalton subdivides he can make 7 lots out of the 10 ½ acres. The lots need to be large enough for the homes to sit inside the setbacks and support a septic system. He would also be able to put accessory structures to the subdivision on the site.

Associate County Attorney Sarah Zambon asked the Board if they would either like material on the Land Development Code presented at meetings for discussion or prior to the meeting, have time to read the material, then have discussion at the meeting. The Board preferred the material prior to the meeting, having time to review it, then had discussion it at the meeting.

There being no further business, Chairman Bonessi asked for a motion to adjourn the meeting. Jim Crafton made first motion. Jim Phelps seconded. All Board members were in favor of adjourning the meeting at 5:03 PM.

Dean Bonessi, Chairman

Karen Ann Antonucci, Secretary